


COMMONWEALTH OF VIRGINIA

Department of Environmental Quality
Water Quality Division
Larry G. Lawson, P.E., Director

Subject: **Guidance Memo No. 04-2010
Public Participation Procedures For Water Quality Management Planning**

To: Regional Directors

From: Larry G. Lawson, P.E., Director 

Date: May 12, 2004

Copies: Regional Office Deputy Directors, Regional Office Water Quality Management Planning Managers, Al Pollock, Office of Water Quality Program Managers, WQMA Staff, Cindy Berndt, and EPA Region III

Summary:

This document sets forth the public participation procedures that the Board should follow in connection with development of TMDLs, 305(b)/303(d) Integrated Reports, and 303(e) WQMPs in order to provide the public and stakeholders with an adequate opportunity to participate in their development and implementation. The applicability of these procedures to WQMP actions is intended only for those cases where the WQMP action is not covered by the requirements of Virginia's Administrative Process Act.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.state.va.us/water/>.

Contact information:

For additional information on TMDL studies and WQMP actions, please contact Mr. Charles Martin at chmartin@deq.state.va.us or (804) 698-4099. For additional information on 303(d) report actions, please contact Mr. Darryl Glover at dmglover@deq.state.va.us or (804) 698-4321.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Public Participation Procedures for Water Quality Management Planning

Virginia Department of Environmental Quality
Office of Water Quality Programs
Watershed Programs Section

April 5, 2004

NOTE (4/5/04): The following document contains the “Public Participation Procedures for Water Quality Management Planning” approved by the State Water Control Board on March 23, 2004. This document supersedes the “Water Quality Management Planning Public Participation Guidelines Guidance Manual” approved by the SWCB in May, 2002.

Public Participation Procedures for Water Quality Management Planning

Background:

On November 5, 2001, the State Water Control Board (“the Board”) published for public comment a proposed regulation concerning public participation guidelines for water quality management planning and the proposed repeal of 18 existing water quality management plans (“WQMPs”) as state regulations. After completion of the public comment period, several changes were made to the original proposal, including a decision to have the Board (i) establish a public participation process in guidance, not regulation, and (ii) have a WQMP Regulation that would contain total maximum daily loads (“TMDLs”), stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations (“WLAs”). The final regulatory actions were published in the Virginia Register on March 24, 2003 and were effective April 24, 2003. Changes to the WQMP regulation are subject to Virginia’s Administrative Process Act (“APA”). The non-regulatory parts of the WQMPs will continue to be available for planning purposes and are addressed in this document. This document contains the public participation procedures for water quality management planning and assessment actions. The procedures have been expanded from those approved by the Board to provide additional information to staff.

1. Purpose.

This document sets forth the public participation procedures that the Board should follow in connection with development of TMDLs, 305(b)/303(d) Integrated Reports, and 303(e) WQMPs in order to provide the public and stakeholders with an adequate opportunity to participate in their development and implementation. The applicability of these procedures to WQMP actions is intended only for those cases where the WQMP action is not covered by the requirements of the APA.

2. Public notice of TMDL actions.

A. The Board should give public notice of the following actions:

1. A TMDL development process is beginning under §62.1-44.19:7 of the Code of Virginia;
2. A draft TMDL report has been prepared and is ready for public review and comment;
3. A TMDL implementation plan development process is beginning under §62.1-44.19:7 of the Code of Virginia;
4. A draft TMDL implementation plan has been prepared and is ready for public review and comment; and

5. A two year priority schedule for TMDL development has been prepared, pursuant to §62.1-44.19:7 C Code of Virginia, and is ready for public review and comment.

B. Public notices may describe more than one TMDL or TMDL actions.

3. Public notice of 305(b)/303(d) Integrated Report actions.

A. The Board should give public notice of the following actions:

1. The draft guidance for developing the 305(b)/303(d) Integrated Report for assessing water quality and defining impaired-waters has been prepared under §62.1-44.19:5 C of the Code of Virginia and is available for public review and comment;
2. The draft 305(b)/303(d) Integrated Report has been prepared under §62.1-44.19:5 C of the Code of Virginia and is available for public review and comment; and
3. An impaired water has attained water quality standards and is to be removed from the EPA approved 303(d) list prior to EPA approval of the subsequent 303(d) list.

B. Public notices may describe more than one 305(b)/303(d) Integrated Report action.

4. Public notice of WQMP actions.

A. The Board should give public notice of the following actions:

1. A WQMP revision is beginning under 5 C.
2. WQMP advisory committee is to meet; and
3. A revised WQMP has been prepared and is ready for public review and comment.

B. Public notices may describe more than one WQMP action.

5. Conditions applicable to WQMPs.

A. WQMPs should contain the non-regulatory elements set forth in §303(e) of the CWA and in 40 CFR § 130.7(d)(2).

B. WQMPs should serve as repositories for TMDL reports, including the pollutant reductions required to restore water quality, TMDL implementation plans, and other information pursuant to 40 CFR § 130.7(d)(2) and §62.1-44.19:7 of the Code of Virginia.

C. Every 5 years all WQMPs should be reviewed and the Board should determine if revisions are needed to reflect new requirements or changing water quality conditions.

D. Advisory committees should be established to assist the Board in the revision of the WQMPs. WQMP advisory committees should include, but not be limited to, representatives in the watershed from local governments, wastewater treatment plant owners, environmental groups, agriculture, silviculture, manufacturing, and mining.

6. Public notice of actions pertaining to the Public Participation Procedures for Water Quality Management Planning.

The Board should give public notice anytime that a revision is to be made to any of the processes contained in this document.

7. Public notice methods.

A. Virginia Register.

Public notices described under section 2 A; under section 3 A; under section 4 A; and under section 6 should be given by publication in the Virginia Register.

B. Mailings.

Public notice described under section 2 A 1 - 4; under section 3 A; under section 4 A; and under section 6 should be given by mailing or e-mailing a copy of a notice to the following:

1. Any Planning District Commission that may have jurisdiction over the areas included in the action;
2. Persons on the mailing list maintained by the Board including those who request to be on the list;
3. Federal and state agencies having jurisdiction that may be affected by the action;
4. Soil and Water Conservation Districts having jurisdiction over areas included in the action;
5. Chief administrative officer or designee and chair of governing body or designee of any unit of local government having jurisdiction over the areas included in the action; and
6. Any adjacent state that may be affected by the results of the action.

A central contact list of persons and organizations interested in receiving copies of all public notices covered by this document will be maintained by the Office of Water Quality Programs. Regional DEQ offices will be responsible for maintaining watershed-specific contact lists of the persons and organizations described in section 7 B.

C. Newspaper.

The actions described under section 2 A 1 and under section 4 A 1 should be published in a newspaper of general circulation in the area in a manner deemed appropriate by the Board. All newspaper notices should include a request for interested persons to request placement on a mailing list for future notices concerning the action by contacting the appropriate staff person.

D. Other Methods.

The public notice described under section 2 A 1 - 4; under section 3 A; under section 4 A; and under section 6 should be given by any other method reasonably calculated to give actual notice to persons potentially affected, including press releases, or any other forum or medium to elicit public participation, such as posting on the Internet.

E. Timing.

Public notices described under section 2 A; under section 3 A; under section 4 A; and under section 6 should allow at least 30 days for public comment after publication.

F. Contents.

All public notices issued for the water quality management planning actions covered by these procedures should contain the following minimum information:

1. Description of the action being taken.
2. The name of the water or stream segment, location description (including the name of the county), and watershed for which the action is being taken.
3. A brief description of the procedures for submitting comments and the time and location of any public meeting that may be held.
4. Name and address of the Department's offices responsible for the action for which public notice is being given. If the study or action will involve multiple regions, each regional office affected should be listed.
5. Name, address, telephone number and e-mail address of a person(s) from whom interested persons may obtain fact sheets and additional information.

In addition to the general public notice described above, the public notice of a public meeting should contain the following additional information:

1. Date, time, and place of public meetings; and
2. A brief description of the nature and purpose of the public meeting, including the applicable rules and procedures.

8. Public meetings.

A. The Board should hold a public meeting for actions described under section 2 A 1 - 4; under section 3 A 2, and under section 4 A.

B. Public notice of the public meetings should be given as specified under section 7.

C. Any public meeting convened pursuant to this section should be held in the geographic area of the proposed action.

9. Public comments and agency response.

During the public comment period, any interested person may submit written comments on the actions being public noticed. All relevant comments should be considered by the Board when taking actions under section 10. A summary response to comments should be prepared and made available to the public. Appendix B contains additional detail on the summary response document.

10. Board actions.

The following are the Board actions related to the Water Quality Management program:

1. Approve WQMPs developed in accordance with section 5C of these guidelines;
2. Approve submission of TMDL reports to EPA
3. Approve final TMDL reports and authorize inclusion of approved TMDL reports in the appropriate WQMP;
4. Adopt TMDL WLAs as part of 9VAC 25-720, Water Quality Management Planning Regulation, in accordance with §2.2-4006A.4.c and §2.2-4006B of the Code of Virginia, except in those cases when permit limitations are equivalent to numeric criteria contained in the Virginia Water quality standards, such as bacteria;
5. Approve TMDL Implementation Plans and authorize inclusion of approved TMDL Implementation Plans in the appropriate WQMP; and
6. Approve revisions to these Public Participation Procedures for Water Quality Management Planning.

11. Delegation.

The director or his designee may perform any action contained in this document except those prohibited by § 62.1-44.14 of the State Water Control Law.

Appendix A – Sample Public Notice

DEPARTMENT OF ENVIRONMENTAL QUALITY NOTICE OF PUBLIC MEETING AND PUBLIC COMMENT

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) for Pleasant Run, Mill Creek, Muddy Creek, and Holmans Creek. These streams are listed on the 1998 303(d) TMDL Priority List and Report as impaired due to violations of the State's water quality standards for the General Standard (Benthics).

Section 303(d) of the Clean Water Act and §62.1-44.19:7.C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The Pleasant Run stream segment is located in Rockingham County. It is 6.30 miles in length and begins at the headwaters and continues to the confluence with the North River. The Mill Creek stream segment is located in Rockingham County. It is 2.66 miles in length and begins at the headwaters and continues to the confluence with the North River. The Muddy Creek stream segment is located in Rockingham County. It is 10.36 miles in length and begins at the headwaters and continues to the confluence with Dry River. The Holmans Creek stream segment is located in Rockingham and Shenandoah Counties. It is 10.44 miles in length and begins at the headwaters and continues to the confluence with the North Fork of the Shenandoah River.

The first public meeting on the development of the TMDL to address the Benthic Impairment for these segments will be held on **Thursday, May 2, 2002, 7:00 p.m.** at the DEQ Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia

The public comment period will end on June 3, 2002. A fact sheet on the development of the TMDLs for the benthic impairments is available upon request. Questions or information requests should be addressed to Sandra Mueller. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Sandra T. Mueller, Department of Environmental Quality, 4411 Early Road, Harrisonburg, Virginia 22801, telephone (540) 574-7848, fax (540) 574-7878, or e-mail stmueller@deq.state.va.us.

Appendix B – Public Comment Response Document Preparation

A key element of the public participation process is public comment and response. Though public comment may be generated and collected throughout the TMDL development process, the bulk of public comment is received during public meetings. Regardless of when and where it is generated, comments received during the TMDL development process will be compiled in a comment-response document as detailed below.

Comments received should be directed to the appropriate TMDL coordinator and handled as follows:

- Copy the comment(s) to all parties involved with the preparation of the TMDL,
- Enter the comment(s) into a central comment-response document containing comments received for that TMDL,
- Prepare or request preparation (from appropriate source) of a response for each comment received,
- Place responses into the central comment-response document referenced above,
- Mail a copy of the comment-response document to each party that submitted a written comment,
- Append a copy of the comment-response document to the final TMDL for submittal to the EPA.

Though comments can be received throughout the TMDL development process, the cutoff for the comment-response document preparation will be 30 days after any public meeting.

Note that there will be one comment-response document prepared for each public meeting. These separate comment-response documents will be combined for submittal to the EPA.